

# **EXHIBIT No. 11**

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND  
FOR NEW CASTLE COUNTY

<b>CATHY BURKETT-WOOD and</b>	)	
<b>CALBEL WOOD, her</b>	)	
<b>husband,</b>	)	
	)	C.A. No. 02C-10-263-CLS
<b>Plaintiffs,</b>	)	
	)	
v.	)	
	)	
<b>THERESA HAINES,</b>	)	
	)	
<b>Defendant.</b>	)	

On Plaintiffs' Motion to Exclude the Expert Testimony of Bradley Probst.  
**GRANTED.**

**MEMORANDUM OPINION**

Michael I. Silverman, Esquire, Silverman McDonald & Friedman,  
Wilmington, Delaware, Attorney for Plaintiffs.

Stephen P. Casarino, Esquire, Casarino, Christman & Shalk, P.A.,  
Wilmington, Delaware, Attorney for Defendant.

SCOTT, J.

## I. INTRODUCTION

On May 2, 2006, the Defendant Theresa Haines (“Haines”) requested that the Court memorialize in a written opinion its ruling with regard to Plaintiffs’ Motion in Limine to Exclude Bradley Probst’s (“Probst”) biomechanical expert testimony. Upon consideration of the evidence presented, review of Plaintiffs’ Motion and Defendant’s response, the Court concluded that Plaintiffs’ Motion should be **GRANTED**.

## II. BACKGROUND

Cathy Burkett-Wood (“Burkett-Wood”) commenced this action against Haines as a result of alleged injuries sustained from an automobile accident which occurred on December 10, 2000 at the intersection of U.S. Route 40 and Delaware Route 7. Haines rear-ended Burkett-Wood as she was attempting to merge onto the highway.

Haines identified Probst as an expert witness to testify to the forces upon the vehicles involved in the accident. Haines stated that the purpose of Probst’s testimony was to demonstrate that the forces involved in the accident were no greater than forces Burkett-Wood would have experienced during everyday living. Before trial, Burkett-Wood moved *in limine* to exclude the testimony of Probst, a biomechanical expert. The Court granted Burkett-Wood’s motion.

### III. STANDARD OF REVIEW

Under Delaware Rule of Evidence (“D.R.E.”) 702, expert testimony is admissible provided the expert is qualified to testify by virtue of his or her “knowledge, skill, experience, training or education” and the scientific, technical or other specialized information “will assist the trier of fact to understand the evidence or to determine a fact in issue....”<sup>1</sup> D.R.E. 702 is identical to its federal counterpart, F.R.E. 702. In *M.G. Bancorporation, Inc. v. Le Beau*,<sup>2</sup> the Delaware Supreme Court adopted the interpretation of F.R.E. 702 of the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*<sup>3</sup> as the interpretation of D.R.E. 702. *Daubert* established a “gatekeeping” role for the court to “ensure that any and all scientific testimony ...is not only relevant, but reliable.”<sup>4</sup> D.R.E. 702 “establishes a standard of evidentiary reliability”<sup>5</sup> and “requires a valid ... connection to the pertinent inquiry as a precondition of admissibility.”<sup>6</sup> If an expert’s opinion is challenged, “the trial judge must decide if the expert’s

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<sup>1</sup> D.R.E. 702.

<sup>2</sup> 737 A.2d 513 (Del. 1999).

<sup>3</sup> 509 U.S. 579 (1993).

<sup>4</sup> *Daubert*, 509 U.S. at 589; *M.G. Bancorporation*, 737 A.2d at 522.

<sup>5</sup> *M.G. Bancorporation*, 737 A.2d at 523 (internal citation omitted).

<sup>6</sup> *Id.*

testimony ‘has a reliable basis in the knowledge and experience of the relevant discipline.’”<sup>7</sup>

The factor test mentioned in *Daubert*<sup>8</sup> is not a definitive checklist or test, rather, it is a guideline for determining whether any particular opinion is based on valid reasoning and reliable methodology.<sup>9</sup> “The ultimate touchstone is helpfulness to the trier of fact, and with regard to reliability, helpfulness turns on whether the expert’s technique or principle [is] sufficiently reliable so that it will aid the jury in reaching accurate results.”<sup>10</sup>

The decision in *Daubert* was explicitly directed to considerations of expert scientific testimony. In *Kumho Tire*,<sup>11</sup> the Court held “that *Daubert*’s general principles apply to [all] the expert matters described in Rule 702.”<sup>12</sup> “[T]he trial judge must determine whether the [proffered] testimony has ‘a reliable basis in the knowledge and experience of [the relevant]

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<sup>7</sup> *Id.*

<sup>8</sup> The Court in *Daubert* held that the following factors should be considered: (1) whether the reasoning or methodology underling the opinion is scientifically valid; (2) whether that reasoning or methodology can be properly applied to the facts at issue; (3) whether the theory or technique has been tested, subject to peer review and publication; and (4) whether it has been generally accepted. *Daubert*, 509 U.S. at 593-94.

<sup>9</sup> *Pfizer Inc. v. Advanced Monobloc Corp.*, 1999 WL 743927, at \*3 (Del. Super.)(internal citation omitted).

<sup>10</sup> *In re Paoli Railroad Yard PCB Litigation*, 35 F.3d 717, 744 (3d Cir. 1994)(internal citation omitted).

<sup>11</sup> *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999); adopted by the Delaware Supreme Court in *M.G. Bancorporation*, 737 A.2d at 522.

<sup>12</sup> *Kumho Tire*, 526 U.S. at 149.

discipline.”<sup>13</sup> “The factors identified in *Daubert* may or may not be pertinent in assessing reliability, depending on the nature of the issue, the expert’s particular expertise, and the subject of his testimony.”<sup>14</sup> The trial judge “is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.”<sup>15</sup>

#### IV. DISCUSSION

The Court was asked to decide whether Probst’s testimony, regarding forces on the vehicles determined using biomechanical principles, met the standards for admissibility of expert testimony.

The Court considered the evidence as a whole in deciding whether Probst had sufficient knowledge to make reasonable conclusions about the accident and whether that testimony would mislead the jury.<sup>16</sup> If the Court concluded that the testimony was reasonable and not likely to mislead, then the testimony would be admissible. In making the decision on the admissibility of Probst’s biomechanical testimony, the Court considered evidence in the following three areas: (1) Probst’s knowledge of the

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<sup>13</sup> *Id.* (internal citation omitted).

<sup>14</sup> *Kumho Tire*, 526 U.S. at 150 (internal citation omitted).

<sup>15</sup> *Id.* at 152.

<sup>16</sup> *Cunningham v. McDonald*, 689 A.2d 1190, 1193 (Del. 1997).

accident; (2) Probst's knowledge of the Plaintiff; and (3) Probst's qualifications. In the present case, the Court concluded that Probst's proposed testimony was inadmissible. Therefore, Plaintiffs' Motion in Limine to Exclude Probst's Testimony was **GRANTED**.

(1) Knowledge of the accident.

The Court considered Probst's knowledge of the vehicles' mechanical environments and the events surrounding the accident. Mechanical environments include specific knowledge of the external and internal conditions of the vehicles such as damage to the vehicle; actual position of the headrest, including how plaintiff's head contacted the headrest; and the particular model of the seat and its physical characteristics. Events surrounding the accident include knowledge of skid marks and other vehicles involved.

In the present case, the Court concluded that Probst's conclusions were too speculative and unreliable to be used as a basis for determining any probable injury to Burkett-Wood. In particular, Probst did not personally examine either vehicle. He based his conclusions on the photographs of the vehicles which he discussed in his report, however, he failed to list them as materials relied upon. Furthermore, since Probst was unable to ascertain Burkett-Wood's actual position he could not calculate the total amount of

force or the force applied to a particular part of her body. He merely talked about what typically or possibly occurred and not what occurred to a reasonable degree of scientific probability. Probst was also unable to determine the actual position of the headrest prior to impact. Based on the foregoing, the Court determined that Probst's conclusions were unreliable.

(2) Knowledge of the Plaintiff

The Court also considered Probst's knowledge of Burkett-Wood's pre-existing degenerative condition since biomechanical testimony must provide definitive evidence that the physics of a particular accident did (or did not) cause a particular injury to a particular individual.<sup>17</sup> The court must consider whether the expert considered the effect of pre-existing medical conditions and the unique susceptibility of a particular plaintiff to the injuries claimed.<sup>18</sup> In the present case, Probst's studies failed to account for Burkett-Wood's pre-existing degenerative condition. His testimony did not connect the general biomechanical analysis of the physical forces involved in the accident to the unique medical history that provided the necessary, reliable link to Burkett-Wood. Therefore, the Court concluded that Probst's generalized conclusions were not a trustworthy measure of the critical fact at

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<sup>17</sup> *Eskin v. Carden*, 842 A.2d 1222, 1228 (Del. 2004).

<sup>18</sup> *Id.*



issue and would have resulted in juror speculation, confusion and unfair prejudice.<sup>19</sup>

### (3) Qualifications

24 *Del. C.* Chapter 28 (“Chapter 28”) makes it unlawful for any person to practice engineering in Delaware unless they are registered under that chapter.<sup>20</sup> The practice of engineering includes consultation, investigation or evaluation in connection with machines, equipment or processes when such professional services requires the application of engineering principles and data. Consultation and investigation of the forces and stresses employed as a result of an auto accident constitute the practice of engineering.

The exceptions to the registration requirement of Chapter 28 are narrowly tailored, and do not cover out of state professional engineers temporarily practicing in Delaware.

Other professions including chiropractors,<sup>21</sup> dentists,<sup>22</sup> physicians,<sup>23</sup> and nursing,<sup>24</sup> have statutes that provide certain exceptions from registration for those persons temporarily practicing in the state. Chapter 28 does not.

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<sup>19</sup> See *Mason v. Rizzi*, 2004 WL 439690 (Del. Supr.); *Eskin*, 842 A.2d 1222 (Del. 2004).

<sup>20</sup> 24 *Del. C.* §2802.

<sup>21</sup> 24 *Del. C.* §713.

<sup>22</sup> 24 *Del. C.* §1134.

<sup>23</sup> 24 *Del. C.* §1726.

<sup>24</sup> 24 *Del. C.* §1921(a)(6).

The chiropractic statute is the most specific. It provides a specific exemption for examination, recommendation, or testimony in litigation.<sup>25</sup> The statutes establish minimum requirements for professionals that practice in specific areas that the State has chosen to regulate. The State has chosen to regulate the practice of engineering and has established minimum requirements.

The Court concluded that Probst was not qualified to offer engineering testimony as he was not registered pursuant to 24 *Del. C.* Chapter 28.<sup>26</sup>

## V. CONCLUSION

The Court found that Probst was not qualified to testify as an engineer and that his testimony was inadmissible. Therefore, Plaintiffs' Motion to Exclude the Expert Testimony of Probst was **GRANTED**.

**IT IS SO ORDERED.**

---

Judge Calvin L. Scott, Jr.

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<sup>25</sup> See *id.* §713.

<sup>26</sup> The Court notes that Probst does not appear to be a registered professional engineer in any state.

Honorable John Erlick  
Trial Date: 4/20/09

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

ABDI ABSHIR and GASLE JAMA,

Plaintiffs,

v.

ANNETTE OTIS and "JOHN DOE"  
OTIS, wife and husband, and the  
marital community composed thereof;  
jointly and severally

Defendants.

No. 08-2-08509-1 SEA

ORDER GRANTING PLAINTIFFS  
MOTION IN LIMINE TO EXCLUDE  
BRADLEY PROBST TESTIMONY  
AND CERTAIN MATTERS

~~(Proposed)~~

**ORDER**

THIS MATTER, having come on before the Court on Plaintiff's Motion  
in Limine to (1) exclude the testimony of Bradley Probst and (2) excluding reference to  
the following issues, as detailed below:

The Court having considered:

1. Plaintiff's Motion in Limine and supporting exhibits;
2. Files and records herein; and

ORDER GRANTING PLAINTIFFS  
MOTION IN LIMINE -- 1

GRAHAM LUNDBERG & PESCHEL, P.S., INC.  
ATTORNEYS AT LAW  
500 JOHN STREET  
SEATTLE, WASHINGTON 98109-5013  
(206) 448-1992  
FACSIMILE (206) 448-4640

~~COPY~~

ORDERS010

3. \_\_\_\_\_;
4. \_\_\_\_\_;
5. \_\_\_\_\_;

and deeming itself fully advised,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion in Limine is GRANTED as to the use of a Juror Questionnaire; and it is further;

**ORDERED, ADJUDGED AND DECREED** as follows:

1. TESTIMONY OF BRADLEY PROBST

Excluded Limited as follows: Not excluded

2. INJURIES TO DEFENDANT OR OTHER NON-PARTIES

Excluded Not excluded

3. BIOMECHANICAL OPINIONS OR ANALYSIS OF JON JACOBSON, Ph.D.,

P.E.

Excluded Not excluded

4. RECOVERY IS NOT SUBJECT TO TAXATION

Excluded Not excluded

ORDER GRANTING PLAINTIFFS  
MOTION IN LIMINE -- 2

GRAHAM LUNDBERG & PESCHEL, P.S., INC.  
ATTORNEYS AT LAW  
500 JOHN STREET  
SEATTLE, WASHINGTON 98109-5013  
(206) 448-1992  
FACSIMILE (206) 448-4640

5. CIRCUMSTANCES SURROUNDING EMPLOYMENT OF ATTORNEY

Excluded

Not excluded

6. NO EX-PARTE COMMUNICATION WITH PLAINTIFF'S TREATING PHYSICIANS

Excluded

Not excluded

7. UNRELATED CLAIMS OR LAWSUITS OF PLAINTIFFS

Excluded

Not excluded

8. EXISTANCE OR NONEXISTANCE OF INSURANCE

Excluded

Not excluded

9. WITNESSES NOT CALLED TO TESTIFY

Excluded

Not excluded

10. THIS MOTION IN LIMINE

Excluded

Not excluded

DONE IN OPEN COURT this 14<sup>th</sup> day of July, 2009.

The Honorable

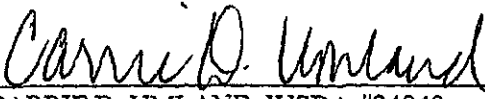
John P. Erick  
John P. Erick

ORDER GRANTING PLAINTIFFS  
MOTION IN LIMINE -- 3

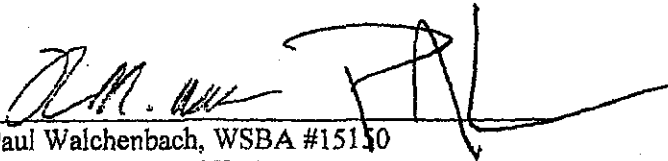
GRAHAM LUNDBERG & PESCHEL, P.S., INC.  
ATTORNEYS AT LAW  
500 JOHN STREET  
SEATTLE, WASHINGTON 98109-5013  
(206) 448-1992  
FACSIMILE (206) 448-4640

Presented by:

GRAHAM LUNDBERG & PESCHEL, P.S., INC.

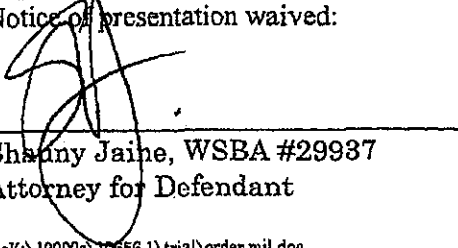


CARRIE D. UMLAND, WSBA #24949  
Attorney for Plaintiff JAMA



Paul Walchenbach, WSBA #15150  
Attorney for Plaintiff Abshir  
*THOMAS M. IKEDA WSBA 8925*

Copy received; Approved as to form;  
Notice of presentation waived:



Shadny Jaine, WSBA #29987  
Attorney for Defendant

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ORDER GRANTING PLAINTIFFS  
MOTION IN LIMINE -- 4

GRAHAM LUNDBERG & PESCHEL, P.S., INC.  
ATTORNEYS AT LAW  
500 JOHN STREET  
SEATTLE, WASHINGTON 98109-5013  
(206) 448-1992  
FACSIMILE (206) 448-4640

Honorable Theresa Doyle

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

MARC S. STERN,

Plaintiff,

v.

DOUGLAS H. CLARK, and the marital  
community of Douglas H. Clark and Carrie M.  
Clark,

Defendant.

NO. 08-2-18857-4 SEA

ORDER EXCLUDING DEFENSE'S HUMAN  
FACTORS EXPERT BRADLEY W. PROBST  
FROM TESTIFYING AT TRIAL AND CIVIL  
CONTEMPT

[Clerk's Action Required]

THIS MATTER having come before the Court on Plaintiff's motion to exclude the testimony of Bradley W. Probst at trial and for civil contempt, and the Court having considered the following pleadings:

1. The Court's Order Compelling Response to Items 7 and 8 of Subpoena Duces Tecum to Bradley W. Probst dated November 3, 2009;
2. Plaintiff's Motion to Exclude Defense's Human Factors Expert Bradley W. Probst from Testifying at Trial and for Civil Contempt dated November 9, 2009
3. Declaration of Joseph L. Koplin and attached Exhibits A through E dated November 9, 2009.
4. *Defendants Response*
5. *Declaration of Steven Takahashi*
- 6.

And the Court having heard argument of counsel, and the Court finding that:

1	✓	Bradley W. Probst, a biomedical engineer, is not qualified by knowledge,
2		skill, experience, training or education as a human factors expert pursuant to
3		ER 702, and his testimony in the area of human factors will not assist the
4		trier of fact to understand the evidence or determine a fact in issue;
5		Bradley W. Probst has failed to fully comply with the subpoena duces tecum
6		which accompanied his deposition notice and has further failed to fully
7		comply with the terms of the Court's order dated November 3, 2009, and is
		in civil contempt per RCW 7.21.010(b) and (d);

8 It is therefore ORDERED as follows:

10	✓	The defense may not offer Bradley W. Probst as a human factors expert at
11		trial in this matter.
12		Bradley W. Probst shall not be permitted to testify at trial in this matter
13		unless and until he has fully complied with the terms of the subpoena duces
		tecum and the Court's November 3, 2009 order.

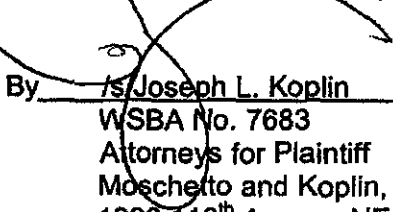
14 DONE IN OPEN COURT this 16 day of Nov., 2009.

15   
16 ~~HON. THERESA DOYLE~~

17 Presented by:

Copy Received:

18 MOSCHETTO AND KOPLIN, INC., P.S.

19 By  /s/ Joseph L. Koplin  
20 WSBA No. 7683  
21 Attorneys for Plaintiff  
22 Moschetto and Koplin, Inc., P.S.  
23 1800 112<sup>th</sup> Avenue NE, Suite 300E  
24 Bellevue, WA 98004-2954  
25 Phone: (425) 641-6000  
Fax: (425) 641-1745  
E mail: [joekoplin@mandk.net](mailto:joekoplin@mandk.net)

  
Steven S. Takahashi, WSBA No. 19084  
Attorney for Defendant



SUPERIOR COURT OF WASHINGTON STATE  
KING COUNTY

ULIBEE PARKER CORNER, a married  
individual,

Plaintiff,

vs.

ADAM G. LUSARDO and JANE DOE  
LUSARDO, and their marital  
community, if any, and JANE DOES and  
JOHN DOES, 1 through 10, inclusive,

Defendants.

NO. 11-2-04500-5 KNT

ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE  
TESTIMONY OF BRADLEY  
PROBST  
(Proposed)

This issue came before the Court on the Plaintiff's Motion To Exclude Testimony Of  
*Declaration of Kristian Erik Sakum, and attached*  
Bradley Probst. The Court has considered the Motion, Response, if any, and Reply, if any, and  
*Declaration of William H. Fald, and attached exhibits, and*  
the pleadings and documents on file in this matter. *Plaintiff's reply*

*NOW, THEREFORE,*

It is hereby ordered that Bradley Probst is excluded from testifying at trial in this case.

Further: *Medical injury causation must be proved*  
*by competent medical testimony. Probst's opinions*  
*only on ~~visual~~ examination of photographs of*  
*damage to the subject vehicles and controlled*

ORDER GRANTING  
MOTION TO EXCLUDE - 1

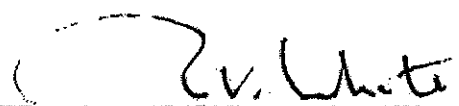
ORIGINAL

ORDERS016

SEMENEALAW FIRM, P.S.  
10845 MAIN STREET  
BELLEVUE, WASHINGTON 98004  
TELEPHONE: (425) 688-1108  
FACSIMILE: (425) 688-1106

low impact tests experienced by volunteers subjected to low <sup>and</sup> impacts which he asserts are of comparable or greater severity to that experienced by plaintiff.

His conclusion that there is "no injury mechanism present in the subject incident" to account for plaintiff's injuries go well beyond the opinion testimony deemed within the discretion of the court to admit in Malek v. Armstrong, 111 W. App 557 (2002). Probet's opinions are not helpful to the jury & Done in Open Court this 29<sup>th</sup> day of February, 2012:

  
The Honorable Jay V. White

Presented by:

SEMENE LAW FIRM, P.S.


By 

Leonard Semenea, WSBA #35327

Kristian Erik Soholm, WSBA #30535

Attorneys for the Plaintiff

In determining whether this particular plaintiff in this particular case sustained injury from the particular accident. Further, given that all the medical or chiropractic testimony in this case supports the view that plaintiff was injured in the subject accident, it is apparent that even if Probet has relevant testimony to offer, its probative value is substantially outweighed by the danger of confusing or misleading the jury, if not unfair prejudice, and should be excluded. ER 403



ORDER GRANTING  
MOTION TO EXCLUDE - 2

ORDERS017

SEMENE LAW FIRM, P.S.  
10845 MAIN STREET  
BELLEVUE, WASHINGTON 98004  
TELEPHONE: (425) 688-1108  
FACSIMILE: (425) 688-1106

Judge Barbara Linde

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

JENNY SHIM,

Plaintiff,

vs.

JOSEPH P. SWENSON and that marital  
community of Joseph P. Swenson and Judith  
M. Swenson,

Defendants

NO. 11-2-03939-1 SEA

**GRANTING PLAINTIFF'S MOTION**  
ORDER EXCLUDING BRADLEY PROBST  
FROM TESTIFYING AT TRIAL

~~[PROPOSED]~~

THIS MATTER came before the Court on plaintiff's motion to exclude the testimony of defense expert Bradley Probst at trial. The court having considered the following pleadings:

1. Motion to Exclude Trial Testimony of Bradley Probst.
2. Declaration of Joseph L. Koplin with Exhibits 1-21.
3. Response in Opposition to Motion to Exclude Opinions of Brad Probst.
4. Declaration of Adam Cox with Exhibits A-E.
5. Plaintiff's Reply Brief.

It is hereby ORDERED that Bradley Probst is excluded from testifying at trial in this case pursuant to ER 402, 403, 702, 703;

ORDER EXCLUDING BRADLEY PROBST

- 1

2012-05-25 Order Excluding Probst (Shim)

**MOSCHETTO  
KOPLIN**

Moschetto & Koplin, Inc., P.S.  
1800 112th Ave NE, Suite 300E  
Bellevue, WA 98004-2954  
425-641-6000 tel  
425-641-1745 fax

1 Further: The court finds the probative value of Mr. Probst's  
 2 testimony is substantially outweighed by the likelihood  
 3 of misleading or confusing the jury. The testimony  
 4 offered leads to an inference that Mr. Probst is  
 5 testifying, as a medical expert, about the plaintiff's  
 6 injury in this case. Mr. Probst is not qualified to do  
 7 so. His testimony is excluded under ER 403.  
 8 Additionally, the court finds his testimony doesn't  
 9 meet the test of ER 703 + 702 under the facts of  
 10 this case, based on the materials recorded before the  
 11 court, & it is thereby ~~excluded~~ <sup>excluded</sup> from proof.  
 12 DONE IN OPEN COURT this 20 day of May, 2012.

*Barbara Linde*

JUDGE BARBARA LINDE

Presented by:

MOSCHETTO &amp; KOPLIN, INC., P.S.

/s/ Joseph L. Koplin

By

Joseph L. Koplin, WSBA #7683  
Attorneys for Plaintiff Shim

Copy Received:

LAW OFFICES OF KELLEY J. SWEENEY

By

Adam C. Cox, WSBA #35677  
Attorneys for Defendant Swenson

ORDER EXCLUDING BRADLEY PROBST

- 2

2012-05-25 Order Excluding Probst (Shim)

MOSCHETTO  
KOPLINMoschetto & Koplin, Inc., P.S.  
1800 112th Ave NE, Suite 302E  
Bellevue, WA 98004-2954  
425-641-6000 tel  
425-641-7765 fax

HONORABLE PATRICK OISHI

Hearing Date: Sept. 6, 2012

**FILED**  
KING COUNTY, WASHINGTON

SEP 06 2012

SUPERIOR COURT CLERK  
BY: NANCY L. SLYE  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

WILLIAM ROGER ARNOLD,

Plaintiff,

v.

SINAN S. DEMIREL and JANE DOE  
DEMIREL, husband and wife, and the marital  
community composed thereof; and JOHN  
DOES 1-5,

Defendants.

NO. 10-2-45161-7 KNT

ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE  
DEFENDANTS' BIOMECHANICAL  
EXPERT WITNESS AT TRIAL

(PROPOSED)

This matter having come on duly and regularly for hearing before the undersigned  
judge of the above-entitled court upon plaintiff's motion to exclude the testimony of  
defendants' biomechanical expert witness at trial, the court having reviewed the records  
and files herein, now, therefore,

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////

////

ORDER GRANTING PLAINTIFF'S MOTION  
TO EXCLUDE DEFENDANTS' BIOMECHANICAL  
EXPERT WITNESS AT TRIAL - 1

THE GOSANKO LAW FIRM  
7513 SE 27TH STREET, SUITE A  
MERCER ISLAND, WA 98040-2836

(206) 275-0700



IT IS HEREBY ORDERED that plaintiff's motion to exclude defendants' biomechanical expert witness Bradley W. Probst from testifying at trial is GRANTED. \*

DONE IN OPEN COURT this 6<sup>th</sup> day of September, 2012.

  
HONORABLE PATRICK OISHI

Presented by:

THE GOSANKO LAW FIRM

By 

Gary N. Gosanko, WSBA #13757  
Attorney for Plaintiff

Approved as to form;  
Notice of presentation waived

LAW OFFICES OF KELLEY J. SWEENEY

By  

Jason J. Hoeft, WSBA #39547  
Attorneys for Defendants

\* The court finds that the opinion testimony of Mr. Probst is not relevant to any issue still before the court (ER 401 and 402), and admission of his testimony would be unduly prejudicial and confusing (ER 403). His testimony is also inadmissible under ER 702 and 703. While Mr. Probst is qualified as an expert in his field, his opinions would not assist the trier of fact resolve any issues still before the court.

ORDER GRANTING PLAINTIFF'S MOTION  
TO EXCLUDE DEFENDANTS' BIOMECHANICAL  
EXPERT WITNESS AT TRIAL - 2

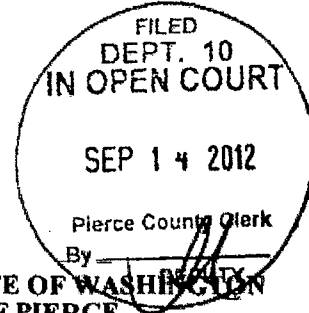
THE GOSANKO LAW FIRM  
7513 SE 27TH STREET, SUITE A  
MERCER ISLAND, WA 98040-2836

(206) 275-0700

28288 9/18/2012 550158



The Honorable Garold E. Johnson



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

NANCY D. GUZEK and  
CHRISTOPHER E. GUZEK, wife and  
husband and the marital community  
comprised thereof,

Plaintiffs,

v.

JANET P. RUBINO and "JOHN DOE"  
RUBINO, wife and husband and the  
marital community comprised thereof;

Defendants.

NO. 09-2-06071-7

**ORDER EXCLUDING BRADLEY  
PROBST**

~~PROPOSED~~

THIS MATTER having come on before the above-entitled court on Plaintiffs' Motion for  
an Order Excluding Bradley Probst, and the court, having reviewed the records and pleadings  
filed herein, including:

1. Plaintiff's Motion to Exclude Trial Testimony of Bradley Probst;
2. Declaration of Mark W. Watson in Support of Plaintiff's Motion to Exclude Trial  
Testimony of Bradley Probst (with exhibits);
3. Defendant's Response to Plaintiff's Motion to Exclude Bradley Probst; Motion to  
Strike;
4. Declaration of Mathew Marinelli in Support of Defendant's Response to  
Plaintiff's Motion to Exclude Bradley Probst;

Order Granting Plaintiff's Motion  
to Exclude Bradley Probst - 1

The Law Offices of Watson & Gallagher, P.S.  
3623 South 12<sup>th</sup> Street  
Tacoma, WA 98433  
253-926-8437  
Fax 253-301-2167

20200 9/18/2012 550159

1 5. Plaintiff's Reply Brief; and

2 6. Reply Declaration of Mark W. Watson (with exhibits).

3 Does hereby,

4 ORDER, ADJUDGE AND DECREE as follows:

5 1. Plaintiff's Motion is hereby GRANTED. Bradley Probst, including any  
6 references to him or any of his opinions, is hereby excluded.

7 ~~2. The defendants' motion to strike is denied.~~

8 3. \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_


FILED  
DEPT. 10  
IN OPEN COURT

SEP 14 2012

Pierce County Clerk

By \_\_\_\_\_

11  
12 DONE IN OPEN COURT this 14 day of SEPT., 2012.

13  
14   
15 Judge Garold E. Johnson

16 Presented by:

17 THE LAW OFFICES OF  
18 WATSON & GALLAGHER, P.S.

19   
20 MARK W. WATSON, #24260  
21 Attorney for Plaintiffs

22 Approved as to form by:

23 LAW OFFICES OF  
24 KELLEY J. SWEENEY

25  WSBA NO  
26 20765  
27 MATHEW D. MARINELLI, #24199  
28 Attorney for Defendant

Order Granting Plaintiff's Motion  
to Exclude Bradley Probst - 2

The Law Offices of Watson & Gallagher, P.S.  
3623 South 12<sup>th</sup> Street  
Tacoma, WA 98433  
253-926-8437  
Fax 253-301-2167



1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON.

2 IN AND FOR THE COUNTY OF PIERCE

3  
4 NANCY D. GUZEK and )  
CHRISTOPHER E. GUZEK, wife )  
5 and husband and the marital )  
community comprised thereof, )

6 Plaintiffs, )

7 vs. ) No. 09-2-06071-7

8 JANET P. RUBINO and "JOHN DOE" )  
9 RUBINO, wife and husband and )  
the marital community comprised )  
10 thereof, )

11 Defendants. )

12 VERBATIM REPORT OF PROCEEDINGS

13 [Motions]

14  
15 [September 14, 2012]

16 Honorable GAROLD E. JOHNSON  
17 Department No. 10  
Pierce County Superior Court

18 APPEARANCES

19 For the Plaintiffs: Mark W. Watson  
Attorney at Law

20  
21 For the Defendants: Mark Dietzler  
Attorney at Law

22  
23 LESLIE J. THOMPSON, CCR  
OFFICIAL COURT REPORTER  
PIERCE COUNTY SUPERIOR COURT  
24 930 TACOMA AVENUE SOUTH, #334  
TACOMA, WA 98402  
25 (253) 798-2979

September 14, 2012

1 THE COURT: Guzek versus Rubino, R-u-b-i-n-o,  
2 09-2-06071-7. No. 5 on the docket.

3 MR. WATSON: Good morning, Your Honor. Mark  
4 Watson, here on behalf of the Guzek.

5 MR. DIETZLER: Good Morning, Your Honor. Mark  
6 Dietzler. I'm here for Matt Marinelli, representing  
7 defendant Rubino.

8 THE COURT: Very good.

9 I've read the materials. And I will tell you I'm  
10 very familiar with both the Stedman case and the  
11 Arrington case as well, and the other cases surrounding.  
12 You may continue.

13 MR. WATSON: So with that, I guess I'll launch  
14 in to a briefer argument than I was planning, Your Honor.  
15 If you're already familiar with the cases; the case at  
16 bar arose from a rear end motor vehicle collision. An  
17 arbitrator was appointed. After about a  
18 two-and-a-half-year process of going through arbitration,  
19 we finally got to arbitration in October of 2011. A  
20 local attorney arbitrated the case.

21 The defense then appealed the arbitration award. And  
22 after appealing for the first time retained a defense  
23 expert, this engineer, Brad Probst, to opine that because  
24 the damage that he could discern from photographs of the  
25 vehicles was minimal in his opinion, there is no way that

September 14, 2012

1 the motor vehicle collision could have been the cause of  
2 the injuries.

3 The case law on this issue is clear and just became  
4 much clearer a month and a day ago when the court decided  
5 Stedman. Your Honor already stated you're familiar with  
6 the case, so I won't go through the facts of that case.  
7 But what Stedman did do was look at a number of other  
8 trial court decisions over the last couple of years where  
9 people like this defense expert, another guy named Allen  
10 Tencer, have routinely been getting excluded in these  
11 cases.

12 In the --

13 THE COURT: Actually, counsel, I think the count  
14 was 12 to 3; in other words, defense -- plaintiffs 3,  
15 defendants 12.

16 MR. WATSON: Well, I don't know where that count  
17 came from. I just also supplied another one from just  
18 about a week or two ago from Judge Hickman where -- just  
19 across the hall -- where he excluded another one. I  
20 don't know who brought the other 12, because I haven't  
21 seen any cases, any trial court orders in this matter  
22 where Dr. Tencer or Mr. Probst were upheld. All I've  
23 seen are those where he's dismissed, and we've submitted  
24 a number of those.

25 And again, what's important here is that the Court of

September 14, 2012

1 Appeals in Stedman specifically addressed those cases and  
2 really adopted what the trial courts are doing. And the  
3 Stedman Court said despite this *Ma'ele versus Arrington*  
4 case from ten years ago, these trial courts are finding  
5 that it's junk science for a defense engineer to come in,  
6 look at photographs of cars, and merely from a review of  
7 those photographs and some other written discovery to  
8 render the opinion that a particular plaintiff, like  
9 Ms. Guzek in this case, could not have been injured in  
10 the car crash because crash test volunteers in other  
11 cases were not seriously injured in car crashes.

12 The Stedman case not only really adopted and glommed  
13 on to these other trial court decisions excluding these  
14 engineers, but also reviewed and adopted some cases from  
15 other jurisdictions.

16 For example -- and I provided the court with a copy  
17 of *Schultz versus Wells*, a case from Colorado. I've  
18 provided the court with a copy of *Tittsworth versus*  
19 *Robinson*, a case from Virginia, where these courts are  
20 essentially saying -- not essentially, they're directly  
21 saying that having an engineer review photographs or  
22 repair estimates and from that rendering an opinion about  
23 causation in the face of medical testimony or care  
24 provider testimony to the contrary, simply invites the  
25 jury to speculate and confuses the jury.

September 14, 2012

1           When an engineer gets up on the witness stand with  
2           all of this education and starts using all this technical  
3           jargon, a jury gets confused and misled by that. And so  
4           the courts are now very commonly rejecting these defense  
5           experts. And that's exactly what we're asking Your Honor  
6           to do in this case.

7           Again, I don't want to belabor it. You started this  
8           hearing telling me that you're already familiar with the  
9           cases, so I think it's pretty clear that Your Honor has  
10          heard a motion like this before, probably has made  
11          rulings on this issue before, and I imagine you're going  
12          to make a ruling here today somewhat consistent with what  
13          you've done in the past.

14          A couple of last points though. The Society of  
15          Automotive Engineers, SAE is the acronym. Mr. Probst,  
16          the defense expert in this case, is a member of that  
17          society, and he cites a number of older SAE articles but  
18          overlooks one that came down in February of 2011. And I  
19          supplied the court with a copy of that as well.

20                 THE COURT: I read it.

21                 MR. WATSON: And in that SAE article the Society  
22          of Automotive Engineers concluded that trying to come up  
23          with some threshold force or threshold injury-causing  
24          event is beyond the state of the art of biomechanics;  
25          that's a quote from what they said. It's simply nothing

September 14, 2012

1           that biomechanics should be doing or can be doing. And  
2           again, that's as of February of 2011.

3           The defense expert's reports in this case is bereft  
4           of any reference to that recent article and instead  
5           relies on a number of older articles.

6           I also supplied the court with another SAE article  
7           really calling in to question the accuracy of determining  
8           crush damage from merely looking at photographs. It  
9           really can't be done. There was a chart in that article  
10          that I provided the court that showed extremely  
11          wide-ranging crush estimates from engineers merely from  
12          the review of photographs. That's not an accurate way to  
13          come up with crush damage.

14          So there's just nothing in this record that should  
15          lead this court to allow this defense expert to testify  
16          in this case. He should be excluded.

17          Finally, last point. I cited the court to *Wilson*  
18          *versus Horsley*, a 1999 Supreme Court case. We have in  
19          this case at bar almost identical to the facts of what  
20          happened in *Wilson versus Horsley*.

21                 THE COURT: That's actually an amendment adding  
22                 different issues.

23                 MR. WATSON: It was. And actually adding --  
24                 amending a complaint or an answer, the court has to do  
25                 that freely.

September 14, 2012

1           And the Supreme the Court said that attempting to  
2           amend a claim after arbitration, even though a trial  
3           court must freely grant that, is something that's  
4           improper. It's unfair. Mandatory arbitration is set up  
5           so we can get these cases resolved.

6           And unfortunately, some insurance companies are  
7           coming into these arbitrations with virtually nothing.  
8           They don't like the award. They appeal it, and now here  
9           we are another year later. And if they want to try to  
10          put on these defenses, they need to do it before and  
11          during arbitration so that my clients feel like that  
12          they're actually getting a fair shake and hopefully  
13          trying to get the case resolved.

14          With that, I'll turn it over to Mr. Dietzler.

15                 MR. DIETZLER: Good morning, Your Honor.

16                 THE COURT: Good morning.

17                 MR. DIETZLER: Mark Dietzler.

18          Mr. Watson has set forth some arguments, and most of  
19          the arguments that he talks about go to the potential  
20          weight of the opinion of Mr. Probst.

21          One thing I think the court needs to keep in mind is  
22          that the plaintiffs have offered no competing testimony  
23          to Mr. Probst in filing this motion. The plaintiff has  
24          not deposed Mr. Probst.

25          The decisions that they reference and what other

September 14, 2012

1 courts do or don't do, those are within the discretion of  
2 those courts and their particular cases and the facts of  
3 the cases that are before them.

4 And then, you know, you have the Stedman case and the  
5 Ma'ele case. Stedman is Division I; Ma'ele is Division  
6 II, which was Judge Kitty-Ann van Doorninck. She sets  
7 forth the rationale for why the expert was not excluded  
8 in the Ma'ele case, which is our Division I case, in  
9 which she basically has stated that there was no issue of  
10 Frye, right.

11 She said that the generally -- that there's  
12 generally-accepted scientific -- in the community, the  
13 principles of these low-speed impacts. The evidence was  
14 helpful in determining the issue of proximate cause.  
15 Evidence of forces involved was relevant. In that case  
16 it was -- it was Dr. Tencer. Dr. Tencer did not offer an  
17 opinion regarding whether or not this particular  
18 plaintiff was injured.

19 And she basically ruled that Tencer's opinion was  
20 that he would not expect a person to be injured in such  
21 an accident. And Judge van Doorninck's ruling was the  
22 jury was entitled to believe Tencer over other witnesses  
23 and that the Frye test had been met.

24 So there's no per se rule of exclusion of experts,  
25 and there's no per se rule that a biomechanical



September 14, 2012

1 engineer's testimony and experience do not meet the Frye  
2 test. In fact, the only evidence before this court is  
3 Mr. Probst's report and declaration that basically state  
4 that these are the scientific principles and this is the  
5 evidence.

6 Now, if the court were inclined to grant such a  
7 motion prior to trial -- which I don't think the court  
8 should do -- what the other courts have not [sic] done is  
9 they'll make a determination simply on the paper without  
10 listening to the expert before trial.

11 And if this court were inclined to want to dismiss  
12 Mr. Probst just based upon argument of counsel with no  
13 evidence to the contrary, we would request that the court  
14 have an evidentiary hearing where Mr. Probst can testify.  
15 He can come in and set forth his opinions before the  
16 court, before there would be any prejudice to my client  
17 in terms of having him excluded in advance of trial.  
18 That way Mr. Watson would have the opportunity to address  
19 whatever issues he thinks are important. Then the court  
20 could make its decision at that particular time.

21 I know the trial is not set until October 31st of  
22 this year, so there's time to do that. I don't think it  
23 would take more than a few hours.

24 THE COURT: Maybe in your calendar.

25 MR. DIETZLER: But simply, Your Honor, I don't

September 14, 2012

1 think that there's been sufficient evidence set forth  
2 upon which this court can exclude Mr. Probst at this  
3 point. And I think it's premature for the court to do  
4 so.

5 THE COURT: Thank you.  
6 Counsel.

7 MR. WATSON: Yes. Very briefly.

8 First of all, in this case, unlike Ma'ele, the  
9 defense expert, Brad Probst, specifically concluded  
10 Ms. Guzek was not injured.

11 In the Division II case of Ma'ele, the court  
12 specifically said that Dr. Tencer did not render an  
13 opinion like that, and therefore, they did allow the  
14 discretion of the trial court to be upheld in allowing  
15 him. We have a much different situation here.

16 Second of all, there's no need for an evidentiary  
17 hearing. The case law is very clear. It's either junk  
18 science or it's misleading and confusing of the jury, as  
19 the Stedman Court held less than a month ago and as a  
20 number of other trial court decisions have held.

21 And by the way, Your Honor, while opposing counsel  
22 was making their argument, I found that I supplied the  
23 court with six cases excluding these guys, and one of  
24 them being the very recent one from Judge Hickman.

25 No evidentiary hearing is necessary. There are a

September 14, 2012

1           number of bases upon which Mr. Probst should be excluded,  
2           and we ask the court do so.

3                   THE COURT: My count was actually in the Stedman  
4           case. It wasn't all the cases you supplied me. I may  
5           have miscounted that, too.

6           At any rate, I don't find that this is junk science.  
7           I don't think I have that -- I'd have to have an  
8           evidentiary hearing on that. I do not find it is junk  
9           science.

10           Just to make it clear. Unless Judge van Doorninck  
11           was promoted, she didn't make any decision at the Court  
12           of Appeals. She's a Superior Court judge. Judge  
13           Armstrong did, however, in the Arrington case, and the  
14           argument still is sound that was made.

15           Having said that, after reviewing his materials, I  
16           find that they're not helpful compared to their potential  
17           harm. In other words, while somewhat probative at some  
18           level, I think, I tend to agree with the court's comment  
19           it's fascinating science, but not very helpful to the  
20           finder of fact. And therefore, its probative value is  
21           outweighed by its prejudicial effect.

22           One of the things that concerned me as I was reading  
23           through it is that there's no indication, whatsoever, of  
24           how susceptible this particular person is to injury.  
25           None, whatsoever. And neither could he make that kind of

September 14, 2012

1 a calculation.

2 There's no indication he has any idea of the  
3 location, the movement, the forward forces, the lateral  
4 movement, any of that on the part of the plaintiff before  
5 impact. There's no indication of how much energy may  
6 have been enforced because she applied the brakes,  
7 because he has no idea how fast the car was going when  
8 the brakes were applied.

9 There's no indication of energy to be absorbed by  
10 other matters at the scene, non-photographed matters,  
11 such as underneath of the car, or the curb, or the -- in  
12 this case wouldn't be a curb, but whatever else may have  
13 been there. None -- nothing, whatsoever. No photographs  
14 of the area that he reviewed at all.

15 And clearly, the inference that this expert is trying  
16 to persuade the jury -- because he said so outright --  
17 but even if I was to strike that portion of it, the only  
18 import of this testimony is the inference that the  
19 defendant [sic] was not hurt in this accident. But  
20 there's no medical testimony that supports that  
21 conclusion whatsoever.

22 The only -- the major problem here is that we do have  
23 this problem of an aura of an expert. The man has  
24 terrific credentials, but not helpful to this particular  
25 case.

September 14, 2012

1           Let me take you up -- for that reason alone he would  
2           be excluded from this case.

3           Let me move beyond that. The idea that we go through  
4           all the arbitration, all the time and energy it takes to  
5           do that, don't call a key witness until trial -- I think  
6           one of the cases, one of the older cases from I think  
7           it's 1993, I've forgotten the name of it, refers to that  
8           as sandbagging.

9           And that, to me, seems like a very serious problem.  
10          Because under the theory of the, at least what it could  
11          lead to, is the defense simply doing nothing but showing  
12          up. Calling no witnesses, doing nothing. Just show up  
13          at the MAR hearing, knowing full well that they have  
14          better experts in the closet somewhere, then call them at  
15          trial. That is simply exactly the opposite of the intent  
16          and purpose of the MAR rules. And for that reason, too,  
17          I would exclude this witness.

18          And I notice, by the way, this isn't the first time  
19          this happened. I think that's also true in the Stedman  
20          case. That's exactly what happened. That wasn't  
21          mentioned by the Court of Appeals, but that basis, alone,  
22          I would strike it from this case.

23          Buy nevertheless, in this case -- and I'm very aware  
24          that the MAR says it's a trial -- it's not an appeal.  
25          It's a trial as if no trial had been held. I'm very

September 14, 2012

1           aware of that. But that's still the underlying purpose  
2           of the trial, itself, of the MAR hearing, itself.  
3           Consequently, he will be excluded on that basis. He will  
4           be excluded from this case.

5                       MR. WATSON: Thank you, Your Honor. I have an  
6           order.

7                                       [Whereupon, the verbatim report of  
8                                       proceedings adjourned.]

9  
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September 14, 2012

C E R T I F I C A T E

STATE OF WASHINGTON       )  
  ) ss.  
COUNTY OF PIERCE       )

I, Leslie J. Thompson, an official court reporter for  
Pierce County Superior Court, do hereby certify that the  
foregoing is a true and accurate transcript of the proceedings  
as taken by me in the above-entitled matter.

DATED: \_\_\_\_\_

\_\_\_\_\_  
LESLIE J. THOMPSON, CCR  
OFFICIAL COURT REPORTER  
CCR NO. 2690

The Honorable Hollis R. Hill  
Trial Date: 12/10/12

**FILED**  
KING COUNTY, WASHINGTON  
NOV 07 2012  
SUPERIOR COURT CLERK  
BY JULIE WARFIELD  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

SANDRA AN,

Plaintiff,

vs.

MICHELLE T. SMITH,

Defendant.

No. 11-2-30189-3 KNT

**ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE TESTIMONY OF  
BRADLEY PROBST**

This issue comes before the Court on Plaintiff's Motion to Exclude Testimony of Bradley Probst. The Court has considered the Motion, Declaration of Miklos Pusztai and the attached declarations and exhibits, defendant's response, the declaration by Eric S. Chavez and attached exhibits, and plaintiff's reply.

Plaintiff has moved this court to exclude in its entirety the testimony of Dr. Bradley Probst proffered by the defense to express opinions that are found on page 9 of his January 9, 2012 report. There being no objection to the competence of the reports and other materials presented for the court's review, this ruling is based on the all records provided by the parties. The reasons for granting this motion are as follows:

Medical injury causation must be proved by competent medical testimony based on a more probable than not standard. Dr. Proubst's opinions that the impact at issue in this case was too slight to have resulted in plaintiff's alleged injuries is in essence a medical opinion which as a biomechanical

**ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE TESTIMONY OF  
BRADLEY PROBST - 1**

ORDERS039



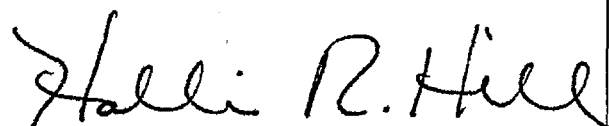
1 engineer Dr. Proubst is not qualified to give. Furthermore, the "limits of human tolerance" as  
2 determined by Dr. Proubst using test subjects of unknown health, age and conditioning are irrelevant to  
3 the question of causation of Ms. An's alleged injuries. Therefore, the testimony regarding the lack of  
4 causal relationship between the subject incident and Ms. An's claimed injuries is inadmissible under  
5 ER 702 and ER 402.

6 Furthermore, this evidence would encourage impermissible speculation on the part of the jury,  
7 in the absence of competent medical evidence, that the plaintiff herself was not in fact injured in the  
8 subject incident. Therefore ER 403 precludes admission of this evidence because its probative value is  
9 substantially outweighed by its potential prejudicial impact.

10 Finally, in his report Dr. Proubst states, "[t]he severity of the subject incident was consistent with a  
11 Delta-V less than 5 miles-per-hour with an average acceleration less than 1.5 g for the subject 2006  
12 Lexus RX 400h in which Ms. An was seated." There is insufficient foundation for this conclusion in  
13 that he utilizes an Insurance Institute for Highway Safety (IIHS) low speed test of an "essentially the  
14 same" vehicle which showed certain damage when crashed into a flat barrier at 5 miles an hour. There  
15 is no assertion or showing that the rear end collision in this case was comparable to a crash into a flat  
16 barrier. The opinions based on these test studies lack sufficient foundation and are therefore irrelevant  
17 under ER 402. Because they would not assist the trier of fact to understand the evidence or determine  
18 a fact in issue they are also inadmissible under ER 702.

19 NOW, THEREFORE ORDERS that Bradley Probst is excluded from testifying at trial in the  
20 above-captioned matter.

21 Dated this 7th day of November, 2012.

22   
23 THE HONORABLE HOLLIS R. HILL  
24

FILED

12 DEC 21 PM 4:17

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED

CASE NUMBER: 12-2-01978-9 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

RACHEL WILLIAMS, an individual,

Plaintiff,

v.

EDWARD B. McLEAN and DUSE F.  
McLEAN, husband and wife, and the  
marital community composed thereof,  
jointly and severally,

Defendant/Respondent.

No. 12-2-01978-9 SEA

**ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE  
BRADLEY PROBST**

**THIS MATTER** came before the Court on Plaintiff's motion to exclude Bradley Probst. The Court having considered the following pleadings:

1. Motion to exclude Bradley Probst;
2. Declaration of Neil Diemer with exhibits;
3. Response in opposition to motion to exclude Bradley Probst;
4. Declaration of Sarah Sato with exhibits, and

ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE BRADLEY PROBST - 1

GRAHAM LUNDBERG PESCHEL, P.S., INC.  
ATTORNEYS AT LAW  
2601 FOURTH AVENUE, FLOOR 6  
SEATTLE, WA 98121  
(206) 448-1992  
FACSIMILE (206) 448-4640

1 5. Plaintiff's reply brief.

2 Defendant argues that Mr. Probst's testimony is "necessary and appropriate to  
3 impeach the testimony and therefore credibility of the plaintiff and plaintiff's expert  
4 Mark Olson." He states "plaintiff will be using her expert Mr. Olson and his  
5 conclusions in regard to the damage to defendant's vehicle to bolster her version of  
6 the facts". That conclusion is not apparent from the material which has been  
7 provided to the court. Rather, what the court has been provided is a two-page report  
8 from Mr. Olson describing the damage to Ms Williams's car in narrative and dollars  
9 and cents terms and concluding that the vehicle is a total loss. There is nothing in  
10 Mr. Olson's report describing forces on either the car or a human occupant.

12 The thrust of Mr. Probst's testimony, on the other hand, is that the forces did  
13 not and could not have caused Ms. William's injuries. The conclusion of his report is  
14 "a causal relationship between the subject incident and the lumbar injuries cannot be  
15 made." He elaborates on this conclusion in the declaration submitted in response to  
16 plaintiff's motion: "my methodology..was to evaluate the forces and the direction of  
17 application of said forces involved in the incident, and to cross-reference those forces  
18 with known biomedical tolerances of the unique individual under question in order to  
19 assess whether the conditions were present to create the mechanism of the claimed  
20 injuries." Decl Probst p. 7 l. 24 - p. 8 l. 3. He then continues to criticize the opinions  
21 of the medical doctors, including the physician hired by defense counsel to conduct a  
22 records review: "The Plaintiff's doctors opine that some of the injuries, or some level  
23

24  
25 ORDER GRANTING PLAINTIFF'S  
26 MOTION TO EXCLUDE BRADLEY PROBST - 2

GRAHAM LUNDBERG PESCHEL, P.S., INC.  
ATTORNEYS AT LAW  
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SEATTLE, WA 98121  
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1 of injury, happened in this event. It is my opinion that the doctors had insufficient  
 2 basis to draw a conclusion of injury causation based upon a lack of objective  
 3 scientific basis. I question the source of those conclusions, and I question whether  
 4 the doctors had sufficient background to draw those conclusions." Decl Bradley W.  
 5 Probst p 10 l.23 – p. 11 l.3.  
 6

7 Mr. Probst's offered testimony goes far beyond a description of the forces in  
 8 this motor vehicle accident. It is an offer of testimony of medical causation from  
 9 someone who is not qualified to give it. Even were Mr. Probst a physician and able  
 10 to diagnose medical causation, which he is not, there is no showing that the idea that  
 11 forces such as existed in this accident are incapable of producing injury is generally  
 12 accepted in the relevant, i.e. medical, scientific community.  
 13

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Plaintiff's motion to  
 15 exclude Bradley Probst is **GRANTED**.  
 16

17 **DONE IN CHAMBERS COURT** this 21 day of December, 2012.  
 18

19 JUDGE PALMER ROBINSON  
 20

21 hm3K12,000s12126-1-1-LEADINGSOrder.doc  
 22

23  
 24  
 25 ORDER GRANTING PLAINTIFF'S  
 26 MOTION TO EXCLUDE BRADLEY PROBST - 3

GRAHAM LUNDBERG PESCHEL, P.S., INC.  
 ATTORNEYS AT LAW  
 2601 FOURTH AVENUE, FLOOR 6  
 SEATTLE, WA 98121  
 (206) 448-1992  
 FACSIMILE (206) 448-4640



King County Superior Court  
Judicial Electronic Signature Page

Case Number: 12-2-01978-9  
Case Title: WILLIAMS VS MCLEAN ET ANO

Document Title: ORDER ORDER GRANTING MOTION TO EXCLUDE

Signed by Judge: Palmer Robinson  
Date: 12/21/2012 4:17:52 PM

A rectangular box containing a handwritten signature in black ink. The signature appears to be "Palmer Robinson" written in a cursive, flowing style.

Judge Palmer Robinson

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 65E89A4D72B346604926B34D9CE7AD8CABD77AEB

Certificate effective date: 2/21/2012 4:23:10 PM

Certificate expiry date: 5/6/2014 5:23:10 PM

Certificate Issued by: CN=Washington State CA B1, OU=State of Washington  
CA, O=State of Washington PKI, C=US

Received

FEB 21 2013

Graham Lundberg Peschel

**FILED**  
KING COUNTY, WASHINGTON

FEB 20 2013

SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

CHRISTOPHER BRUMFIELD,

Plaintiff,

v.

XIMENA A. BUSTAMANTE and "JOHN  
DOE" BUSTAMANTE, wife and husband  
and the marital community composed  
thereof, jointly and severally,

Defendants.

No. 12-2-04210-2 SEA

**ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE  
BRADLEY PROBST**

~~PROPOSED~~ *Q*

**THIS MATTER** came before the Court on Plaintiff's motion to exclude Bradley  
Probst. The Court having considered the following pleadings:

1. Motion to exclude Bradley Probst;
2. Declaration of Bryan A. Olsen with exhibits;
3. Response in opposition to motion to exclude Bradley Probst, if any;
4. Declaration of Sarah Sato with exhibits, if any, and *Q*

**ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE BRADLEY PROBST - 1**

GRAHAM LUNDBERG PESCHEL, P.S., INC.  
ATTORNEYS AT LAW  
2601 FOURTH AVENUE, FLOOR 6  
SEATTLE, WA 98121  
(206) 448-1992  
FACSIMILE (206) 448-4640

**COPY**  
ORDERS045

5. Plaintiff's reply brief, if any. *2*

IT IS HEREBY ORDERED, ADJUDGED AND DECREED Plaintiff's motion to exclude Bradley Probst is GRANTED; Defendants and their experts are precluded from offering testimony or relying upon the opinions of Bradley Probst at trial.

FURTHER:

*The proposed opinions mislead and on several bases. First, assuming the opinions are true, injuries are awarded for more than "bio medical failures" yet his opinions seek to imply that no injuries & any*  
 DONE IN CHAMBERS COURT this 19 day of February, 2013.

JUDGE JIM ROGERS

Presented by:

GRAHAM LUNDBERG PESCHEL, P.S., INC.

SCOTT F. LUNDBERG, WSBA No. 16178  
 BRYAN A. OLSEN, WSBA No. 43498  
 Attorneys for Plaintiff Christopher Brumfield

DocKAI2.000AI2126-1\PLEADINGS\Order.doc

ORDER GRANTING PLAINTIFF'S  
 MOTION TO EXCLUDE BRADLEY PROBST - 2

GRAHAM LUNDBERG PESCHEL, P.S., INC.  
 ATTORNEYS AT LAW  
 2601 FOURTH AVENUE, FLOOR 6  
 SEATTLE, WA 98121  
 (206) 448-1992  
 FACSIMILE (206) 448-4640

Honorable Mary Roberts

## SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

WENDY EHRINGER,

Plaintiff,

v.

LINDA CAPELUTO,

Defendant.

No. 11-2-20921-1 KNT

[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION TO EXCLUDE  
TESTIMONY OF BRADLEY PROBST

THIS MATTER came before the Court on Plaintiff's Motion to Exclude Improperly Testimony of Bradley Probst. The Court reviewed the Plaintiff's Motion; the Declaration of Mel Crawford in Support of said Motion and its attachments; Defendants' Opposition to Plaintiff's Motion;

\_\_\_\_\_ ; and  
the Plaintiff's Reply to Defendants' Opposition.

Being fully informed, the Court finds as follows.

1. Medical injury causation must be proved by competent medical testimony.
2. Mr. Probst is not qualified to provide such testimony.
3. Mr. Probst's opinions go beyond a description of the forces in this motor vehicle accident, *would have to be in order to be relevant to this case.* and are an offer of testimony of medical causation. ~~Even were Mr. Probst a physician and able to diagnose medical causation, which he is not, there is no showing that that the idea that forces such as existed in this accident are incapable of producing injury is generally accepted in the relevant, i.e., medical, scientific community.~~

[PROPOSED] ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE BRADLEY PROBST - 1

MACDONALD HOAGUE & BAYLESS  
705 Second Avenue, Suite 1500  
Seattle, Washington 98104  
Tel 206.622.1604 Fax 206.343.3961



1  
2 4. Mr. Probst's conclusions that there is "no injury mechanism present in the subject incident" to  
3 account for plaintiff's injuries go well beyond the opinion testimony deemed within the  
4 discretion of the court to admit in *Stedman v. Cooper*, 292 P.3d 764 (2012),  
~~*Ma'ele v. Arrington*, 111 Wn. App. 557 (2002).~~

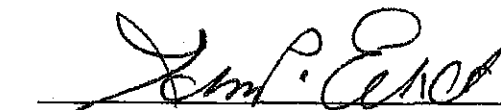
5 5. Mr. Probst's opinions are not helpful to the jury in determining whether this particular  
6 plaintiff in this particular case sustained injury from this particular accident.

7 6. Any probative value of Mr. Probst's testimony is substantially outweighed by the likelihood  
8 of misleading or confusing the jury

9 Based on these findings, the Court hereby ORDERS as follows.

10 Plaintiff's Motion shall be, and hereby is, GRANTED. Bradley Probst shall not testify at  
11 the trial of this matter, and no mention shall be made of his report or his opinions.

12  
13 IT IS SO ORDERED THIS 26<sup>th</sup> day of February, 2013.

14  
15  
16   
17 Honorable Mary Roberts Judge John P. Erlick  
18 King County Superior Court Judge

19  
20 Presented by:

21 MacDONALD HOAGUE & BAYLESS

22  
23 By Mel Crawford, WSNB 22930  
24 Attorneys for Plaintiff

25  
26  
27 [PROPOSED] ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE BRADLEY PROBST - 2

MACDONALD HOAGUE & BAYLESS  
705 Second Avenue, Suite 1500  
Seattle, Washington 98104  
Tel 206.622.1604 Fax 206.343.3961

RECEIVED

OCT 02 2013

LAW OFFICES OF  
LEONARD SEMENEA, P.S.

Hon. Kimberly Prochnau

Hearing date: 9/19/2013

Without oral argument

SUPERIOR COURT OF WASHINGTON STATE  
KING COUNTY

MIGUEL ANGEL GALVAN, a single man,

Plaintiff,

vs.

CRAIG THOMAS HUMMEL, and JANE DOE  
HUMMEL, and their marital community, if any,  
and JAYMIE RENE JONES and JOHN DOE  
JONES, and their marital community, if any,  
and JOHN AND JANE DOES 1 through 10,

Defendants.

No. 12-2-08961-2 SEA

ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE  
TESTIMONY OF BRADLEY  
PROBST

(Proposed) \_\_\_\_\_

This issue came before the Court on the Plaintiff's Motion to Exclude Testimony of  
Bradley Probst. The Court has considered the Motion, Defendants' Response, and Reply, and  
the pleadings and documents on file in this matter.

It is hereby ordered that Bradley Probst is excluded from testifying at trial in this  
case for the following reasons: AS witness in defendant's case-in-chief.  
Plaintiff may However, if plaintiff presents evidence  
of speed or force at impact that is contrary to  
Probst's opinions, then Mr. Probst can be used as a  
rebuttal witness only on the issues of speed

ORDER GRANTING  
MOTION TO EXCLUDE - 1

SEMENEA LAW FIRM, P.S.  
10945 MAIN STREET  
BELLEVUE, WASHINGTON 98004  
TELEPHONE: (425) 688-1108  
FACSIMILE: (425) 688-1106

1 of Force of impact. He may not testify as a rebuttal  
2 regarding activities of daily living ~~center~~  
3 forces involved in  
4  
5  
6  
7  
8  
9  
10

11  
12 Signed in open court on September Oct 2, 2013:

13  
14  
15 The Honorable Kimberly Prochnau  
King County Superior Court Judge

16 Presented by:

KIMBERLEY PROCHNAU

17 SEMENEA LAW FIRM, P.S.

18  
19  
20 Kristian Erik Scholm, WSBA #30535  
Attorneys for the Plaintiff

21 Approved as to Form and Notice of Presentation Waived:

22 Law Offices of Kelley J. Sweeney

23  
24  
25 Lisa Liekhus, WSBA # 30205

26  
ORDER GRANTING  
MOTION TO EXCLUDE - 2

SEMENEA LAW FIRM, P.S.  
10845 MAIN STREET  
BELLEVUE, WASHINGTON 98004  
TELEPHONE: (425) 688-1108  
FACSIMILE: (425) 688-1106

KING COUNTY, WASHINGTON

MAR 03 2014

SUPERIOR COURT CLERK  
BY Marcella Guzman  
DEPUTY

The Honorable Kenneth Schubert  
Trial Date: February 24, 2014

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

JODI TODD, individually,

Plaintiff,

vs.

RYAN JAMES HOVEE and "JANE DOE  
HOVEE", individually and the marital  
community comprised thereof; and D.D.  
DENOTTA, LLC, a Washington  
Corporation, doing business in the State of  
Washington.

Defendants.

NO: 11-2-17140-0 SEA

ORDER ON PLAINTIFF'S MOTIONS IN  
LIMINE

THIS MATTER having come on to be heard before the Court on Plaintiff's Motions in  
Limine and the Plaintiff being represented by Kari I. Lester of the *The Law Offices of Ben F.  
Barcus & Associates, PLLC.*, and the Defendants being represented by Adrienne Harris and the  
Court being duly advised does hereby enter the following Order on Plaintiff's Motions in  
Limine:

ORDER ON PLAINTIFF'S  
MOTIONS IN LIMINE - 1

Law Offices of Ben F. Barcus & Associates  
4303 Ruston Way  
Tacoma, WA 98402  
Phone: (253) 752-4444

ORDERS051  
ORIGINAL

1 Limitations: \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 **31. JURY REHABILITATION**

5 Granted:   ✓  

6 Denied: \_\_\_\_\_

7 Reserved: \_\_\_\_\_

8 Limitations: The Court does not intend to attempt to rehabilitate jurors, but will allow the  
9 parties to do so.

10 **32. EXCLUSION OF BRADLEY PROBST**

11 Granted:   ✓  

12 Denied: \_\_\_\_\_

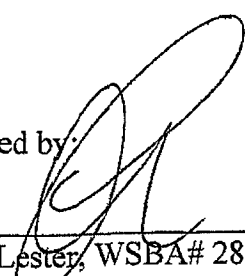
13 Reserved: \_\_\_\_\_

14 Limitations: The Court finds that the probative value of Mr. Probst's testimony is  
15 substantially outweighed by the likelihood of misleading and confusing the jury under  
16 ER 403. The testimony to be offered leads to an inference that Mr. Probst is testifying as  
17 a medical expert about the Plaintiff's injuries, but he has no medical background and he  
18 is not qualified to do so, so his testimony is further excluded under ER 403.  
19 Additionally, the Court finds that Mr. Probst's testimony does not meet the test of ER  
20 702 and 703 in this case and will not be helpful to a trier of fact. The only exception  
21 would be if Plaintiff presents evidence of the speed of the collision or force of impact that  
22 is contrary to Mr. Probst's proffered opinions, then Mr. Probst may potentially be called  
23 in that regard. However, that would be the limited purpose of his testimony and the  
24 matter would have to first be taken outside the presence of the jury.

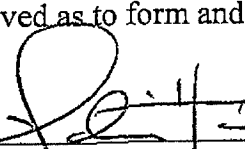
25 \* Mr. Probst's testimony about speed is not relevant because defendant  
hasn't shown that any of plaintiff's experts' opinions would change  
DONE IN OPEN COURT this 3 day of March, 2014. depends on the speed.

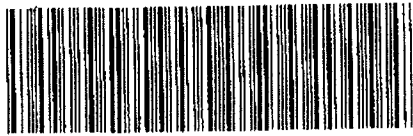
  
JUDGE KENNETH SCHUBERT

Presented by:

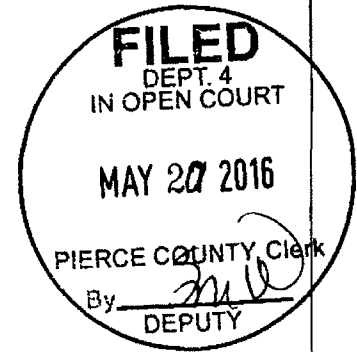
  
Kari I. Lester, WSBA# 28396  
Attorney for Plaintiff

Notice of Presentation Waived  
Approved as to form and content

  
Adrienne Harris, WSBA 28784  
Of Attorneys for Defendant



15-2-05859-8 46941935 ORG 05-23-16



**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY**

TINA DWORSKY, individually,

NO. 15-2-05859-8

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE BRADLEY  
W. PROBST**

v.

AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY,

Defendant.

This matter came before the Court on the Plaintiff's motion to exclude all reports, opinions, and testimony of Bradley W. Probst.

The Court heard the oral argument of counsel for the parties. The Court also considered the pleadings and documents filed in this action and the following evidence:

1. Plaintiff's Motion to Exclude Bradley W. Probst (with Exhibits A-O attached)
2. American Family's Response to Plaintiff's Motion to Exclude Bradley W. Probst
3. Declaration of William L. Weber III in Support of Defendant's Response to Plaintiff's Motion to Exclude Bradley W. Probst (with Exhibits 1-7 attached)
4. Declaration of Dr. Brandt Bede, MD
5. Declaration of Bradley W. Probst

ORDER EXCLUDING PROBST - 1  
H:\Xshare\sks\Dworsky.pi\Pleadings\mot to exclude  
probst.order.doc

TROUP, CHRISTNACHT, LADENBURG,  
McKASY, DURKIN & SPEIR, INC., P.S.  
ATTORNEYS AT LAW

6602 19<sup>TH</sup> STREET WEST • TACOMA, WASHINGTON 98466-6193  
TELEPHONE 253.564.2111 • FACSIMILE 253.566.9343

ORDERS054

ORIGINAL

6. Plaintiff's Reply on Motion to Exclude Bradley W. Probst (with Exhibits A-E  
 attached) *7. Defendant's Sur Response*  
*8. Defendant's Second Sur Response and second affidavit of Brad Probst.*  
 Based on the argument of counsel and the evidence presented, IT IS HEREBY

ORDERED, ADJUDGED, AND DECREED:

1. The Plaintiff's motion is granted.
2. The reports, opinions, and testimony of Bradley W. Probst are and shall be excluded from admission into evidence.
3. There shall be no mention of the reports, opinions, and testimony of Bradley W. Probst in the presence of the jury.

4. \_\_\_\_\_

5. \_\_\_\_\_

DATED this 20 day of May, 2016.

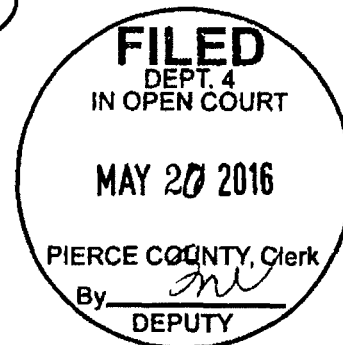
*Bryan Chushcoff*  
 JUDGE BRYAN CHUSHCOFF

PRESENTED BY:

**TROUP, CHRISTNACHT, LADENBURG,  
 McKASY, DURKIN & SPEIR, INC., P.S.**

*Shelly K. Speir*  
 SHELLY K. SPEIR, WSBA #27979

ORDER EXCLUDING PROBST - 2  
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 probst.order.doc



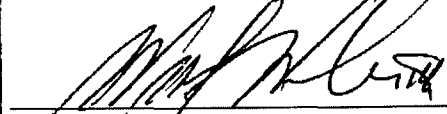
TROUP, CHRISTNACHT, LADENBURG,  
 McKASY, DURKIN & SPEIR, INC., P.S.  
 ATTORNEYS AT LAW  
 6602 19<sup>TH</sup> STREET WEST • TACOMA, WASHINGTON 98466-6193  
 TELEPHONE 253.564.2111 • FACSIMILE 253.566.9343



1 Of Attorneys for Plaintiff

2 APPROVED AS TO FORM; NOTICE OF PRESENTATION WAIVED:

3 **COLE, WATHEN, LEID, HALL, P.C.**

4 

5 **WILLIAM WEBER, WSBA # 28867**  
6 Of Attorneys for Defendant

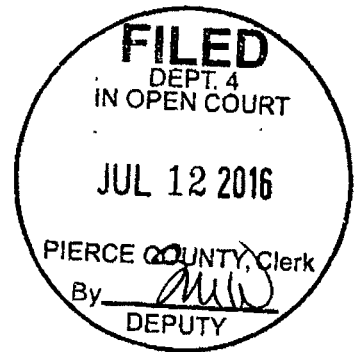
24 ORDER EXCLUDING PROBST - 3  
25 H:\Xshare\sks\Dworsky.pi\Pleadings\mot to exclude  
probst.order.doc

TROUP, CHRISTNACHT, LADENBURG,  
McKASY, DURKIN & SPEIR, INC., P.S.  
ATTORNEYS AT LAW  
6602 19<sup>TH</sup> STREET WEST • TACOMA, WASHINGTON 98466-6193  
TELEPHONE 253.564.2111 • FACSIMILE 253.566.9343

ORDERS056



15-2-05859-8 47234230 ORMRC 07-13-16



## IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

TINA DWORSKY, individually,  
Plaintiff,

vs.

AMERICAN FAMILY MUTUAL INSURANCE  
COMPANY,  
Defendant..

Cause No. 15-2-05859-8

ORDER ON MOTION FOR  
RECONSIDERATION (Second)

**THIS MATTER** having come on regularly before the above-entitled Court upon motion by the Defendant for Reconsideration of the Court's written Order Granting Plaintiff's Motion to Exclude Bradley Probst, the Court reviewed the records and files herein, it ordered that plaintiff provide additional briefing addressing the issue whether repair or other information establishes there was damage to the plaintiff's vehicle not depicted in the photographs of the vehicle. This briefing has been timely provided and the court has reviewed Plaintiff's Response to Defendant's Motion for Reconsideration as well as the Declaration of Steven M. Stockinger in Response to Defendant's Motion for Reconsideration. Pursuant to PCLR 7(c)(3) now, therefore, it is hereby

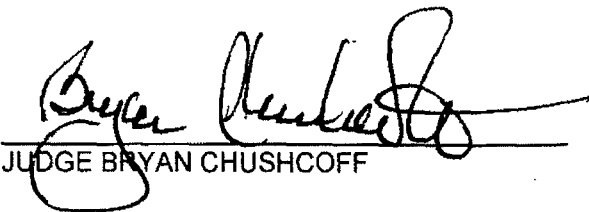
**ORDERED** that Defendant's Motion for Reconsideration of the Court's written Order Granting

\*\*

\*

1 Plaintiff's Motion to Exclude Bradley Probst be and it hereby is **DENIED**.

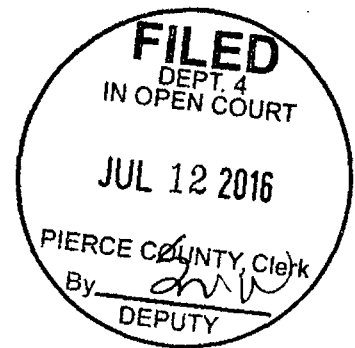
2 **DATED** this \_\_12<sup>th</sup>\_\_ day of July, 2016.

3  
4  
5  
6  
7  
8  
  
JUDGE BRYAN CHUSHCOFF

cc: Pierce County Clerk for filing  
under above cause number

Shelly K. Speir  
Troup, Christnacht, Ladenburg,  
McKasy, Durkin & Speir, Inc. PS  
Attorneys at Law  
6602 19<sup>th</sup> St. W.  
Tacoma, WA 98466-6193

William Weber, III  
Cole, Wathen, Leid, Hall, PC  
Attorneys at Law  
3203 Battery Street  
Seattle, WA 98121



HONORABLE VERONICA ALICEA GALVÁN

Hearing Date: August 16, 2018

Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

AMELIE M. CHALAL, an individual,

Plaintiff,

vs.

CRAIG R. MALKE, an individual,

Defendant.

Case No. 17-2-18821-2 SEA

**ORDER GRANTING PLAINTIFF'S  
MOTION TO EXCLUDE BRADLEY  
PROBST**

THIS MATTER comes before the Court upon Plaintiff's Motion to Exclude Bradley Probst. The Court has reviewed the court file and pleadings submitted, including the following:

1. Plaintiff's Motion for to Exclude Bradley Probst;
2. Declaration of Joseph W. Moore with exhibits;
3. Defendant's Response
4. Declaration of Joseph Kopta
5. Plaintiff's Reply

The COURT hereby FINDS that:

Mr. Probst's opinions exceed his qualifications as he intends to testify as to the causes, or lack of cause, of Plaintiff's injuries.

ORDER GRANTING PLAINTIFF'S MOTION  
TO EXCLUDE BRADLEY PROBST

Case No. 17-2-18821-2 SEA

Page 1 of 2

MOORE LAW GROUP, PLLC

2722 Colby Avenue, Suite 607

Everett, WA 98201

P: (425) 998-8999 / F: (425) 903-3638

ORDERS059

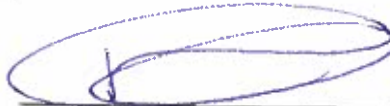
1 Mr. Probst's opinions are inadmissible under ER 702, as they are unhelpful to the trier of  
2 fact.

3 Mr. Probst's opinions are inadmissible under ER 403 as they are unfairly prejudicial,  
4 confusing, and likely to mislead the jury.

5  
6 The COURT therefore ORDERS as follows:


7 Plaintiff's motion to exclude Bradley Probst is **GRANTED**.

8  
9 DONE in open court this 20 day of August, 2018.

10 

11 HONORABLE VERONICA ALICEA GALVÁN

12 MOORE LAW GROUP

13   
14 \_\_\_\_\_  
15 Joseph W. Moore, WSBA No. 44061  
16 Attorney for Plaintiff

17 Approved as to form;  
18 Notice of Presentation Waived By:

19 KOPTA & MACPHERSON

20  
21 \_\_\_\_\_  
22 Joseph R. Kopta, WSBA No. 17682  
23 James E. Macpherson, WSBA No. 8952  
24 Attorneys for Defendant  
25